

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for)	
Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier)	
Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

COMMENTS OF GVNW CONSULTING, INC.

Jeffrey H. Smith
Vice-President and Division Manager – Western Region
Chairman of the Board of Directors
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062

Kenneth T. Burchett
Master Consultant

Alan W. Pedersen
Master Consultant

Robert C. Schoonmaker
President and CEO

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EXECUTIVE SUMMARY

We support the change from distinguishing between rural and non-rural carriers to classifying based on rate of return and price cap carrier distinctions, as it is consistent with the unprecedented industry agreement that was filed with the Commission on July 29, 2011 by the rural carrier national associations and the large price cap companies. This agreement represented significant compromise on the part of each of the signatories in order to reach a consensus. The framework filed provides a complementary set of reform plans designed to advance the cause of sustainable universal service throughout rural America.

The net gap funding approach in the Tribal/Native Broadband Fund provides a limitation to the amount of support that will be provided. The only other proposal we have seen offered for tribal areas is offered by GCI in Alaska and appears to be an attempt for GCI to continue to receive identical support. Though carefully crafted and lobbied with increasing intensity throughout August, it is identical support under a different name. We believe the Commission is committed to reform that will require cost-based support.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We recommend that there be an immediate obligation for VoIP traffic to pay existing ICC rates, in order to put an end to the arbitrage activity related to this type of traffic.

We support the concept of requiring a rate benchmark to encourage rate rebalancing and to ensure that universal service does not subsidize carriers with artificially low rates. We agree with the premise that the benchmark should properly include extended area service charges.

While we question the ability to fully achieve a national broadband plan within the budget constraints that have been discussed to date, we acknowledge that interim steps such as deferring CAF funding for study areas served by particular price cap companies and deferring reductions in intercarrier compensation when funding is not available in that year may be needed steps during the CAF transition. We believe that it will be necessary for the Commission to act on its lengthy record in the contribution mechanism reform matter in order to fully address budget issues in a manner that will withstand legal scrutiny.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

The rural carrier RM is designed to be different than the price cap RM in several key aspects. The rural carrier RM is intended to be an on-going support mechanism and is not designed to be phased-out over time.

Introduction and Background

The purpose of these comments is to respond to the Further Inquiry of the Federal Communications Commission released on August 3, 2011 (DA 11-1348). In the instant Further Inquiry, the Commission seeks comment on certain issues in the universal service and intercarrier compensation proceeding. The Commission's stated intent for any proposed rules it will adopt is to comprehensively reform and modernize the universal service fund (USF) and intercarrier compensation (ICC) systems in place for communications carriers.

GVNW Consulting, Inc. (GVNW) is a management consulting firm that provides a wide variety of consulting services, including regulatory and advocacy support on issues such as universal service, intercarrier compensation reform, and strategic planning for communications carriers in rural America. We are pleased to have the opportunity to offer comments addressing the issues the Commission has raised in its Further Inquiry.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

UNIVERSAL SERVICE

We address the Commission's request for comments in the following.

Elimination of Rural and Non-Rural Carrier Distinctions

At page 3 of the Further Inquiry, the Commission seeks comment "*on the policy implications of eliminating the current references to rural and non-rural carriers in our rules and of adopting two separate approaches to determining support for carriers that operate in rural areas that are uneconomic to serve, based on whether a company is regulated under rate of return or price caps in the interstate jurisdiction.*"

We support this change in policy focus, as it is consistent with the unprecedented industry agreement that was filed with the Commission on July 29, 2011 by the rural carrier national associations and the large price cap companies. This agreement represented significant compromise on the part of each of the signatories in order to reach a consensus. The framework filed provides a complementary set of reform plans designed to advance the cause of sustainable universal service throughout rural America.

CAF Support for Price Cap Areas

At pages 3-5 of the Further Inquiry, the Commission requests input on issues including use of a model, public interest obligations, and eligible telecommunications carrier (ETC) requirements.

With respect to the use of a model and what information would need to be filed in the record, we believe that is prudent from a public policy perspective to independently review all inputs used for the model, including any that are deemed "proprietary." We do not have the ability to offer an opinion on a model we have been unable to review since the CQBAT model is licensed to a select group of carriers. However, the experience

gained and record formed during the Rural Task Force effort indicates that models are not appropriate for rural carriers due to sparsely populated territories lacking a core urban base, significant variations in study area sizes, and higher construction costs. The modeling errors in large company territory tend to average out, which would not be the case for smaller rural providers.

We believe that the public interest obligations issues raised on page 4 of the Further Inquiry tie into the model issues discussed above. Because price cap carriers have historically had difficulty deploying adequate infrastructure investment in high cost to serve areas, it may be appropriate that price cap recipients meet specific build-out milestones over a specified timeframe.

The ETC proposal in the ABC plan that CAF support recipients “incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission” demonstrates the desire of large price cap carriers to shed their carrier of last resort responsibilities. This further demonstrates the need for the Commission to have separate regulatory tracks for price cap carriers and rate of return carriers.

Reforms for Rate-of-Return Carriers

On pages 5-7 of the Further Inquiry, the Commission addresses issues including, but not limited to: re-examining the interstate rate of return and the corporate operations expense limitation formula.

With respect to the interstate rate of return, we believe the Commission should include language that recognizes that a special exception¹ has been made in the current circumstances with regard to Part 65 of the Commission's rules for a rate of return prescription proceeding. When the Commission adopted the Multi-Association Group (MAG) plan a decade ago, it stayed the effectiveness of section 65.101 of its rules that would have required a represcription proceeding in order to not delay implementing the MAG changes. We believe the Commission faces an analogous need to implement USF and ICC change without delay in the present circumstances.

There are several proposals regarding the limitation on corporate expense ranging from the NPRM proposal to eliminate corporate expense from the support mechanisms to the RLEC plan which would limit the corporate expense in interstate in total and in the support mechanisms.

The August 3, 2011 Further Inquiry seems to be an approach that only applies the limitation to the three support mechanisms. It is important that these limitations be evaluated in light of where the corporate operations expenses that are being removed from the support mechanism get assigned. Is it better to assign these costs to the state jurisdiction where there are fewer and fewer services with which to recover the costs, or is it better to leave the cost in interstate and recover from other interstate services?

¹ In one of the Supreme Court cases that affirmed the principles established in *Bluefield Waterworks* (1944), the Court stressed that rate of return should “*reasonably be expected to maintain financial integrity, attract necessary capital, and fairly compensate investors for the risks they have assumed.*” *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968). It is difficult to argue that the risk factor has decreased. Thus, any effort to drive the interstate rate of return below 10% should be avoided in order to avoid litigation.

Ensuring Consumer Equity

On page 7, the Further Inquiry addresses issues on rate benchmarks. We support the concept of requiring a rate benchmark to encourage rate rebalancing and to “*ensure that universal service does not subsidize carriers with artificially low rates.*” [Further Inquiry page 7] We agree with the premise that the benchmark should properly include extended area service charges.

CAF Support for Alaska, Hawaii, Tribal lands, U.S. Territories, and Other Areas

With the goal of offering a cost-based solution to the challenge of providing broadband service in tribal and native locations that meets the FCC’s four principles in FCC 11-13, GVNW developed jointly with four carriers serving tribal/native territory the Tribal/Native Broadband Fund (TBF) proposal. This draft rule section was submitted as Subpart L in ex partes on June 27, June 28 and August 8. [Since that time, we have become aware that the draft of the Restructure Mechanism rules may be designated as Subpart L, and thus the TBF could need to be considered Subpart N.]

Subpart N meets the four principles that the Commission indicated it plans to be guided by in USF and ICC reform: Modernize USF and ICC for Broadband; Fiscal Responsibility; Accountability; and Market-Driven Policies. We expand on how Subpart N meets the four principles as follows:

Modernize USF and ICC for Broadband – The TBF provides the opportunity for small rate of return carriers that are focused on serving tribal and native villages to obtain loans and provide the needed investment in broadband infrastructure. The TBF provides

a transition for carriers committed to making the transition to a broadband paradigm truly a national broadband plan by including the residents in tribal and native regions.

Fiscal Responsibility – The net gap funding approach in the TBF provides a limitation to the amount of support that will be provided as it is initially a safety net fund. For eligible and participating carriers, essentially no new USF would be required, as the reform reductions calculated would be offset by the TBF safety net that maintains the current TIER levels.

The only other proposal we have seen offered for tribal areas is offered by GCI in Alaska and appears to be an attempt for GCI to continue to receive identical support. Though carefully crafted and lobbied with increasing intensity throughout August, it is identical support under a different name. We believe the Commission is committed to reform that will require cost-based support.

The most remote Alaskan native villages are predominantly served by the small rate-of-return carriers. To adequately serve these high-cost-to-serve areas, a Tribal/Native Broadband Fund (TBF) is proposed as a “safety net” for the purpose of maintaining financially viable small rate of return carriers throughout the transition from current legacy USF to the CAF paradigm. An acceptable Alaska plan must fairly address rate of return and other carrier distinctions, each of which creates unique policy requirements. A regulatory policy approach appropriate to each carrier class should be adopted by the Commission.

Accountability – In the proposed TBF, the participating rate of return carriers will provide the Commission and USAC with broadband speed certification, and audited revenue and expense data to establish preliminary and final TBF payment amounts.

Market-Driven Policies – The TBF recognizes that tribal and native lands are generally remote and high-cost to serve, and do not typically represent markets that can independently function through the exercise of competitive choice. However, the winning offset of the TBF proposal is that small rate of return carriers have an established local presence in these tribal/native markets, and intimately understand the needs of their reservations, native villages, and native developments.

Implementing Reform within a Defined Budget

At page 9 of the Further Inquiry, the Commission poses questions related to fund budget issues. While we question the ability to fully achieve a national broadband plan within the budget constraints² that have been discussed to date, we acknowledge that interim steps such as deferring CAF funding for study areas served by particular price cap companies and deferring reductions in intercarrier compensation when funding is not available in that year may be needed steps during the CAF transition.

We believe that it will be necessary for the Commission to act on its lengthy record in the contribution mechanism reform matter in order to fully address budget issues in a matter that will withstand legal scrutiny.

² The Commission's own National Broadband Plan discussed in Section 8.1 (Exhibit 8-B) an estimated present value of a broadband availability gap of approximately \$24 Billion, stated in present year dollars. This reinforces the need for the pause points proposed in the Rural Carrier portion of the Consensus Framework, in order to evaluate the performance of the transition approach for rate of return carriers and to determine what modifications, if any, are necessary to achieve prudent public policy.

Interim Reforms for Price Cap Carriers

If the Commission implements a cap on support at \$250 per line per month for rate-of-return carriers, then this limitation should be applicable to price cap carriers as well.

INTERCARRIER COMPENSATION

We address the Commission's request for comments in the following, and use the term "Consensus Framework" to refer to the landmark agreement between the diverse parties that all made compromises to reach the consensus filed on July 29, 2011.

Federal-State Roles

The Further Inquiry at pages 10-13 poses a series of questions with respect to the proper balancing of the federal and state roles and issues of consistency in the reform of ICC.

The ABC plan proposes a \$30 rate benchmark for price cap carriers, which is slightly different than the \$25 benchmark target proposed as a part of the rate-of-return plan. The Commission asks at page 11 of the Further Inquiry whether there should be different rate benchmarks for different carriers or whether there should be a single benchmark. With respect to the issue of consistency, we believe this slight difference in initial benchmark targets is appropriate when one considers several factors. First, rate of return carriers generally have smaller local calling scopes than the price cap carriers, and a \$5 benchmark differential helps to address that inequity. In addition, rate of return carriers typically serve customers with lower average incomes than do the price cap

carriers that serve a more urban base of customers. We believe that a \$5 differential in initial benchmark should be considered reasonable in the current environment.

With respect to the issue on page 13 of the Further Inquiry regarding the length of the rate transition being three years for price cap carriers and five years for rate-of-return carriers, we respectfully submit that two more years for the transition for rate-of-return carriers is appropriate in light of the respective starting points of the respective rate structures.

Scope of Reform

In the Further Inquiry at page 13, the Commission addresses the issue pertaining to the initial focus of the ICC reform in the Consensus Framework being on terminating rates for end office switching while taking a more limited approach to reforming certain transport elements and originating access rates.

This more limited approach than some may have initially envisioned was necessitated by the Commission's desire to control the size of the fund. It is important to note that a key provision of the Consensus Framework is that if sufficient funding is not expected to be available to provide the required levels of USF support or ICC restructure funding in any year, then any and all reductions in ICC rates are deferred until sufficient funding is available.

With respect to the Commission's concern about additional arbitrage, the proposal to not immediately reform transport rates is justified on several counts. One, switched transport and special access may be considered as substitutable services. If the rate for transport were reduced to a nearly-zero level, it would create an incentive for service

providers to avoid purchasing special access which could distort network usage patterns as well as increasing rate arbitrage. Maintaining existing transport rates at the capped interstate level at the end of step two in the transition should help ameliorate any arbitrage. Two, rate-of-return carrier transport costs are typically larger than price cap carrier costs due to longer distances to transport and lower traffic volumes in the denominator of the rate equation. Placing the transport rate differential in the proposed restructure mechanism does not appear to meet the Commission's current budget targets.

Recovery Mechanism

At page 13 of the Further Inquiry, the Commission begins a discussion on the appropriate recovery mechanisms for ICC reform. Access charges represent real costs to maintain the underlying carrier network for both wireline and wireless networks in the United States. For GVNW clients, access charges represent roughly 1/3 of their revenue stream.

For the rural wireline carrier, the proposed Restructure Mechanism (RM) is the key recovery mechanism with respect to ICC reform. The RM in the Consensus Framework is an essential component to ensuring that rural customers will be able to receive affordable broadband services. If rate-of-return carriers are able to have access to a sufficient RM, further network investment may be possible in rural areas. If not, the National Broadband Plan will be an Urban Broadband Plan.

The rural carrier RM is designed to be different than the price cap RM in several key aspects. The rural carrier RM is intended to be an on-going support mechanism and is not designed to be phased-out over time. As noted in the July 29 Joint Letter, the RM

for rate-of-return carriers is not transitional and has no phase-down or sunset date. The public policy rationale for this difference from the price cap RM is due to the percentage that access charges represent of a rural carrier revenue stream, the low-cost territories served by price cap carriers, and the lack of price flexibility afforded rate-of-return carriers.

Impact on Consumers

In the Further Inquiry at page 16, the Commission poses questions on the impact of Subscriber Line Charges (SLCs) on customers, including reference to the attachment to the ABC Plan of a paper by Professor Jerry Hausman. The Commission opines that *“Professor Hausman’s paper indicates that companies are constrained by competition, which could mean that companies may not be able to increase SLC rates on consumers.”* While we decline to pass judgment on the tenets of the Professor’s paper, if in fact the Commission’s observation on the conclusion of the Hausman paper is indeed correct, then the importance of a sustainable long-term RM for rural carriers is even more crucial to the success of ICC reform.

VoIP ICC

Earlier this year in the “Section XV comments”, the Commission requested comment for at least the fifth time in the past decade³ on whether switched traffic generated by or terminating to IP-enabled services is subject to intercarrier compensation rules and, if so, what rate should be applied to the traffic.

³ Previous Commission attempts have occurred in 2001, 2004 IP-Enabled NPRM, Further Notice in 2005, 2008 Further Notice.

The FCC should take actions in 2011 to confirm that current access charges apply to all traffic terminating via carrier facilities on the public switched telecommunications network (PSTN). There should be no exceptions based on regulatory classification or the technology used to originate the calls (e.g., VoIP). We respectfully submit that it was never the intent to exempt this form of traffic from access charges. Allowing “reform” to occur by regulatory inaction and thus defaulting to all traffic being considered as VoIP is not consistent with existing law, does not fulfill the Commission’s universal service responsibilities and defies common sense and logic. VoIP traffic uses the PSTN the same way as traffic that is generated through the use of other technology platforms. The Commission was correct seven years ago in the 2004 IP-Enabled NPRM, by stating at paragraph 61 that: *“We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.”* We hope that the FCC will balance the promotion of competition with equitable treatment to those that invest in the infrastructure that actually provides the service to customers.

With respect to that “crucial backbone” infrastructure, the Commission must be cautious to recognize the interdependence that wireless carriers have on wireline networks. The mobility provider depends on the wireline provider in its call completion architecture. Current wireless, VoIP, and satellite networks require a connection to land line infrastructure to provide full functionality. This network reality is documented in *Wireless Needs Wires: The Vital Role of Rural Networks in Completing the Call*, published by the Foundation for Rural Service in March, 2006. This paper states in part:

Without thoughtful consideration by policymakers of the challenges of providing wireless services in rural America, as well as the dependence of wireless services on wireline networks, portions of the nation are likely to remain

underserved . . . Most importantly, one must recognize that without the underlying wireline network, wireless networks could not exist in their current form. In spite of this obvious fact, large wireless carriers and policymakers alike continue to pursue practices and policies that will in fact undermine the critical wireline network. While discussions on how to modify reciprocal compensation, access charges, and universal service continue, attention must be placed on ensuring these mechanisms are capable of maintaining the fiscal health of that wireline network.

What has actually occurred is that the debate as to the applicable rate has devolved into a situation where carriers are permitted forms of self-help not available to wireline carriers in phantom traffic scenarios. We recommend that there be an immediate obligation for VoIP traffic to pay existing ICC rates, in order to put an end to the arbitrage activity⁴ related to this type of traffic.

Avoidance of access has created an increased demand on USF and will not go away by a continued avoidance of the problem. Until the actual point in time that voice becomes an application, the FCC must face its access charge regulatory responsibility if it is to meet the legal standard as the expert agency in the matter.

⁴ In most parts of our American life, we are governed by rules and regulations, and there are consequences to our actions. If you enter a grocery store, you have to pay for your cart of groceries before you take them to the trunk of your car. If you enter a car dealership, the owner expects you to pay or make arrangements to pay before you are given the keys and allowed to drive away. However, for the past decade, some carriers have been able to access the facilities of wireline carriers and receive service without an obligation to pay. When carriers have attempted to remedy this situation by various means, the Commission has unequivocally stated that cutting off service for theft of said service shall not be permitted. Thus, for any proposed rule (e.g., VoIP pays access) to be successful, enforcement must be realistic and consistent.

GVNW Comments on Further Inquiry
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Respectfully submitted,

Via ECFS at 8/24/11

Jeffrey H. Smith
Vice-President and Division Manager, Western Region
Chairman of the Board of Directors
jsmith@gvnw.com